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[REDACTED]

**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

**DECISION**  
Case #: MOP - 176503

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**PRELIMINARY RECITALS**

Pursuant to a petition filed August 31, 2016, under Wis. Stat., §49.45(5), to review a decision by the Northern IM Consortium to recover Medical Assistance (MA), a hearing was held on September 22, 2016, by telephone.

The issue for determination is whether the agency correctly determined an MA overpayment for failing to report income.

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, WI 53703

By: [REDACTED]  
Northern IM Consortium  
10610 Main St., Suite 224  
Hayward, WI 54843

**ADMINISTRATIVE LAW JUDGE:**

Brian C. Schneider  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Wood County.
2. Petitioner received in 2013 through 2015 as a one-person household. The only income being budgeted was her social security, which was \$768 in 2013, \$779 in 2014, and \$792 in 2015. Notices sent by the MA agency told petitioner that she had to report any new income.

3. Petitioner began to receive \$200 per month in maintenance from her ex-husband in August, 2013. Petitioner did not report the income until November, 2015.
4. After petitioner reported the maintenance in 2015 the agency looked back and determined that if she had reported it timely, beginning October 1, 2013 she would have had to meet six-month spend-downs to be eligible for MA. Based upon MA amounts paid on petitioner's behalf, she would have met the spend-down each six-month period.
5. The agency determined that petitioner was overpaid MA in the amounts of the six-month spend-downs that she would have been responsible to pay. By notice dated August 25, 2016, the agency informed petitioner that she was overpaid a total of \$4364.21 from October, 2013 through November, 2015. The claim numbers of the overpayments are [REDACTED] [REDACTED]  
[REDACTED]

### DISCUSSION

MA overpayment recovery is authorized by Wis. Stat., §49.497(1):

(a) The department may recover any payment made incorrectly for benefits provided under this subchapter or s. 49.665 if the incorrect payment results from any of the following:

1. A misstatement or omission of fact by a person supplying information in an application for benefits under this subchapter or s. 49.665.
2. The failure of a Medical Assistance or Badger Care recipient or any other person responsible for giving information on the recipient's behalf to report the receipt of income or assets in an amount that would have affected the recipient's eligibility for benefits.
3. The failure of a Medical Assistance or Badger Care recipient or any other person responsible for giving information on the recipient's behalf to report any change in the recipient's financial or nonfinancial situation or eligibility characteristics that would have affected the recipient's eligibility for benefits or the recipient's cost-sharing requirements.

See also the department's MA Handbook, Appendix 2.2.1.1. The overpayment must be caused by the client's error. Overpayments caused by agency error are not recoverable.

An overpayment is calculated as follows:

If a case was ineligible due to excess income, recover **one** of the following:

- The lesser of fee-for-service services Medicaid paid or the amount the member would have paid toward a deductible (If eligible for a deductible).
- The lesser of what the member paid or would have paid toward the deductible and the amount Medicaid has spent on HMO capitation payments.

Handbook, App. 22.2.2.2.

Had petitioner reported the \$200 monthly maintenance, she would have been over the income limit for MA, and she would have had to meet a six-month spend-down to gain eligibility. The agency worker

determined that the cumulative spend-downs were less than the fee-for-service services paid on petitioner's behalf.

Petitioner did not dispute the calculations. She testified that she was sure she told the agency about the maintenance when she started to receive it, and she questioned her ability to repay the overpayment. There simply is no record that petitioner reported the income prior to November, 2015, and it is clear that the income was not budgeted from 2013 until November, 2015. I must conclude that the overpayment was determined correctly.

The Division of Hearings and Appeals does not have authority to reduce the amount based upon ability to pay or lack of financial resources.

### **CONCLUSIONS OF LAW**

The agency correctly determined that petitioner was overpaid MA because she did not report income timely.

**THEREFORE, it is**

### **ORDERED**

That the petition for review is hereby dismissed.

### **REQUEST FOR A REHEARING**

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

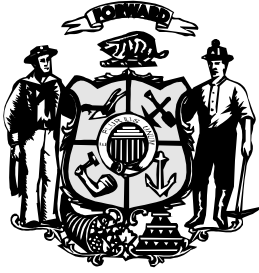
### **APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,  
Wisconsin, this 26th day of September, 2016

\s \_\_\_\_\_  
Brian C. Schneider  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on September 26, 2016.

Wood County Human Services - WI Rapids  
Public Assistance Collection Unit  
Division of Health Care Access and Accountability